

Remarks/Arguments

Applicant has received the Office Action dated July 7, 2009 (hereinafter “Office Action”), wherein 1) claim 14 was objected to due to informalities; 2) claims 55-72 were rejected under 35 U.S.C. § 101 as allegedly directed to non-statutory subject matter; 3) claims 1-12, 16-30, 34-48, 52-66 and 70-72 were rejected under 35 U.S.C. § 103(a) as allegedly obvious over Cometto (U.S. Pat. No. 7,206,288) in view of Soumiya (U.S. Pat. No. 6,671,257); 4) claims 13, 31, 49 and 67 were rejected under 35 U.S.C. § 103(a) as allegedly obvious over Cometto in view of Soumiya and further in view of Wong (U.S. Pat. No. 6,363,077); 5) claims 14, 32, 50 and 68 were rejected under 35 U.S.C. § 103(a) as allegedly obvious over Cometto in view of Soumiya and further in view of Fredericks (U.S. Pat. No. 6,347,334) and 5) claims 15, 33, 51 and 69 were rejected under U.S.C. § 103(a) as allegedly obvious over Cometto in view of Soumiya and further in view of Kanetake (U.S. App. No. 2003/0137978). Applicant has amended claims 1, 4-5, 14, 55 and 58-59, cancelled claims 10, 19-54, 64 and 73-82 and added new claims 83-130. Based upon the amendments and arguments presented herein, Applicant respectfully submits that all claims are in condition for allowance.

I. Examiner Interview

Applicant thanks the Examiner for the telephonic interview requested by Applicant and conducted on October 27, 2009. The status of the restriction requirement, the subject matter rejections and the applicability of the cited art to the claim limitation “measured transmit and receive rates” were discussed during the interview. While no agreement with regard to the obviousness rejections of the claims was reached, it was agreed that Applicant would amend the

II. Restriction Requirement

Based on the re-introduction of rejections of the previously withdrawn claims and on the Examiner Interview, it is Applicant’s understanding that the restriction requirement has been withdrawn. The statuses of the claims have been updated accordingly. Applicant respectfully requests confirmation for the record that the restriction requirement has in fact been withdrawn.

III. Claim Objections

Dependent claim 14 was objected to due to informalities. Applicant has corrected a typographical error in the claim and respectfully requests withdrawal of the objection.

IV. Subject Matter Rejections

Claims 55-72 were rejected as alleged directed to non-statutory subject matter. Based on the Examiner Interview, it is Applicant's understanding that the subject matter rejections of these would be withdrawn. Nonetheless, Applicants have amended independent claim 55 to more clearly indicate that the method is performed by a Fibre Channel switch and is thus tied to a specific machine. Applicant respectfully requests withdrawal of the § 101 rejections of these claims.

V. Obviousness Rejections

In rejecting independent claim 1 as allegedly obvious over Cometto in view of Soumiya, it was stated in the Office Action that,

Cometto does not explicitly disclose *adding measured transmit and receive rates of the port receiving the frame to the frame*.

Soumiya discloses *adding measured transmit and receive rates of the port receiving the frame to the frame* (Fig.26 ref. 8~9 is a rate field and Col.37 line 44-Col.27 lines 52-67 calculates the ER based on the result of the measurement and Col.38 line 15 counting the number of arrived cells during an observation time and using that measurement in calculating the ER).

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Without conceding the merits of the rejection, Applicant has amended independent claim 1 to more clearly indicate that the measured transmit and receive rates required by the claim are based upon the amount of data transferred over a predetermined period of time.² This amendment is at least supported by lines 6-12 of paragraph [0048] of the specification as published, where the rate is stated as being preferably developed by dividing the number of bytes by a time period. The phrase "amount of data" is used to describe not only the number of bytes

¹ Office Action, ¶ 1 at 4.

² Claim 1 was also amended to shorten the preamble, and claims 4-5 have also been amended to maintain consistency with the amendments of claim 1.

transferred but other measured variations such as frames and the like. Applicant notes that the explicit rate (ER) taught by Soumiya is a calculated rate that is based upon an allowed transmission rate of an output channel that is sub-divided by the number of active virtual channels.³ Applicant respectfully submit that Soumiya thus does not teach “wherein the measured transmit and receive rates of the port are determined from the amount of data respectively transmitted and received by the port during a defined time period,” as required by amended independent claim 1.

For at least these reasons, Applicant respectfully submits that independent claim 1, as well as those claims that depend upon it, are all in condition for allowance, and respectfully requests withdrawal of the rejections of these claims. Further, because independent claim 55 was rejected on the same grounds⁴ and has also been amended to include limitations similar to those of amended claim 1,⁵ Applicant submits that claim 55 and all claims that depend upon it are also in condition for allowance and respectfully requests withdrawal of the rejections of these claims.

VI. The New Claims

Applicants have added new claims 83-130, which include limitations similar to those of the remaining original and amended claims without being limited to Fibre Channel switches. Applicants respectfully submit that for at least the same reasons as presented above, these new claims are also allowable.

VII. Conclusion

Applicants respectfully request reconsideration and that a timely Notice of Allowance be issued in this case. Applicants believe that no extensions of time or fees are required, beyond those that may otherwise be provided in documents accompanying this response. Nonetheless, in the event that additional extensions of time are necessary to allow consideration of this paper,

³ See Soumiya, col. 25, ll. 23-38. Applicant further notes that the ER calculation is based on communication connection number counter 723 of Soumiya, not arrived cell number counter 721. See Soumiya, col. 38, ll. 10-15 (“When receiving this signal, the controlling unit 724 assigns the value of the counter 723 as the number of communicating connections N_{ACTIVE} (N_A). The assigned value is notified to the ER calculating unit 703, which calculates the ER using this value until a next N_{ACTIVE} value is notified.”).

³ See Office Action, ¶ 1 at 4.

⁴ See Office Action, ¶ 1 at 4.

⁵ Claims 58-59 were also amended to maintain consistency with the amendments to claim 55.

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such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fees required (including fees for net addition of claims) are hereby authorized to be charged to Wong Cabello's Deposit Account No. 50-1922, referencing docket number 112-0124US.

Respectfully submitted,

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Filed Electronically

/Roberto de León/
Robert de León, Reg. No. 58,967
Wong, Cabello, Lutsch,
Rutherford & Brucculeri, L.L.P.
20333 State Highway 249, Suite 600
Houston, TX 77070
(832) 446-2400
(832) 446-2461 (direct line)
(832) 446-2424 (facsimile)
wcpatent@counselip.com